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Subcommittee

## TRAC/Sales and Use Draft Report

A new section is added to Chapter 35 of Title 11 to read:

**1. SECTION 11-35-XXX. State contractors required to be licensed with the Department of Revenue**

(A) A governmental body or political subdivision shall not contract to purchase tangible personal property, and a person may not contract to sell tangible personal property to a governmental body or political subdivision unless, prior to or upon entering into the contract, and during the term of the contract, the person contracting to sell such tangible personal property is licensed with the SC Department of Revenue and agrees to remit sales and use tax pursuant to Chapter 36 of Title 12. The provisions of this section apply to all sellers, including nonresident sellers who may not be legally obligated to collect and remit the sales and use tax.

(B) The licensing requirement of subsection (A) does not apply:

(1) if all sales of tangible personal property by the person to governmental bodies, political subdivisions, or residents or businesses in this state are exempt from the sales and use tax pursuant to Code Section 12-36-2120; or,

(2) to an affiliate of the person contracting with a governmental body or political subdivision if that affiliate is not selling tangible personal property to a governmental body, political subdivision, or any resident or business in this state.

(C) As used in this section:

(1) the term "person" has the same meaning as in Code Section 12-36-30 and includes every affiliate of the person contracting with governmental body or political subdivision;

(2) the term "affiliate" includes any person that bears a relationship, as set forth in Section 267 of the Internal Revenue Code, to the person entering into a contract, or under contract, with the governmental body or political subdivision; and,

(3) the term "tangible personal property" has the same meaning as in Code Section 12-36-60.

(D) The South Carolina Budget and Control Board shall enforce the provisions of this section and may require governmental bodies and political subdivisions to incorporate within all contracts to purchase tangible personal property penalties that must be imposed upon the person contracting with the governmental body or political subdivision for failure to comply with this section.

(E) Failure of the person contracting with a governmental body or political subdivision to comply with the provisions of this section allows the governmental body or political subdivision, at its discretion, to immediately void the contract, and impose any penalties established under the procurement code or by contract for failure of the person to comply with the law. Any penalties

imposed pursuant to this code section may not be passed on to the governmental body or political subdivision.

**2. SECTION 12-36-60. "Tangible personal property".**

"Tangible personal property" means personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also includes services including \_\_\_\_\_ and intangibles, including data processing, software including software transferred electronically, digital products, communications, laundry and related services, furnishing of accommodations and sales of electricity, the sale or use of which is subject to tax under this chapter and does not include stocks, notes, bonds, mortgages, or other evidences of debt. ~~Tangible personal property does not include the transmission of computer database information by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative service.~~

Comment: The TRAC will take testimony of which services are subject to sales taxes throughout in the United States.

**3. ADD NEW CODE SECTION 12-36-71.**

(A) Notwithstanding any other provision of law, a retailer is presumed to be liable for the sales tax or responsible for collecting and remitting the use tax if the retailer enters into an agreement with a resident of this State under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an Internet Web site or otherwise, to the retailer.

This presumption applies only if the cumulative gross receipts from sales by the retailer to purchasers in this State who are referred to the retailer by all residents with this type of agreement with the retailer is in excess of ten thousand dollars (\$10,000) during the preceding twelve calendar months. This presumption may be rebutted by proof that the resident with whom the retailer has an agreement did not engage in any solicitation in the State on behalf of the retailer that would satisfy the nexus requirement of the United States Constitution during the twelve calendar months in question.

(B) A retailer liable for the sales tax or responsible for collecting and remitting the use tax under the provisions of this section must obtain a retail license and remit sales and use taxes in accordance with the provisions of this chapter on all retail sales of tangible personal property not otherwise exempt.

**4. SECTION 12-36-80.**

(A) Retailer maintaining a place of business in this State, or any similar term, includes any retailer having or maintaining within this State, directly, indirectly or by a subsidiary or other affiliated entity, an office, distribution house, sales house, warehouse, real or personal property, or other place of business, or any agent, independent contractor, or representative operating within this State under the authority of the retailer or its subsidiary or its affiliated entity, regardless of whether the business or agent, independent contractor, or representative is located here permanently or temporarily or whether the retailer or subsidiary or affiliated entity is admitted to do business within this State.

(B) The term also includes, but is not limited to, an out-of-state retailer if: (1) the out-of-state retailer and an in-state company maintaining one or more locations within this State are related parties; and (2) the out-of-state retailer and the in-state company use an identical or substantially similar name, tradename, trademark, or goodwill, to develop, promote, or maintain sales; or the in-state company and the out-of-state retailer pay for each other's services in whole or in part; or the in-state company and the out-of-state retailer share a common business plan or substantially coordinate their business plans; or the in-state company provides services to or on behalf of, or that inure to the benefit of, the out-of-state retailer.

Two persons are affiliated entities or related parties under this section if they bear a relationship such that a deduction for a loss would be disallowed from the sale of property between them pursuant to Internal Revenue Code section 267. For purposes of this section Internal Revenue Code means the Internal Revenue Code as defined in Section 12-6-40(A).

## 5. SECTION 12-36-90. "Gross proceeds of sales".

Gross proceeds of sales, or any similar term, means the value proceeding or accruing from the sale, lease, or rental of tangible personal property.

(1) The term includes:

- (a) the proceeds from the sale of property sold on consignment by the taxpayer;
- (b) the proceeds from the sale of tangible personal property without any deduction for:

- (i) the cost of goods sold;
- (ii) the cost of materials, labor, or service;
- (iii) interest paid;
- (iv) losses;

(v) transportation costs;

(vi) manufacturers or importers excise taxes imposed by the United States; ~~or~~

(vii) installation charges

~~(vii)~~ (viii) any other expenses.

(c) the fair market value of tangible personal property previously purchased at wholesale which is withdrawn from the business or stock and used or consumed in connection with the business or used or consumed by any person withdrawing it, except for:

- (i) withdrawal of tangible personal property previously withdrawn and taxed by such business or person;
- (ii) tangible personal property which becomes an ingredient or component part of tangible personal property manufactured or compounded for sale;

- (iii) tangible personal property replacing defective parts under written warranty contracts if:
  - (A) the warranty, maintenance, service, or similar contract is given without charge, at the time of original purchase of the defective property, or the tax was paid on the sale or renewal of warranty, maintenance, or similar service contract for tangible personal property of which the defective part was a component, whether or not such contract was purchased in conjunction with the sale of tangible personal property,
  - (B) in the case of a warranty, maintenance, service, or similar contract that is given without charge at the time of original purchase of the defective property, the tax was paid on the sale of the defective part or on the sale of the property of which the defective part was a component, and
  - (C) the warrantee is not charged for any labor or materials,
- (iv) an automobile furnished without charge to a high school for use solely in student driver training programs;
- ~~(v) a new motor vehicle used by a dealer as a demonstrator.~~
- (2) The term does not include:
  - (a) a cash discount allowed and taken on sales;
  - (b) the sales price of property returned by customers when the full sales price is refunded in cash or by credit;
  - (c) the value allowed for secondhand property transferred to the vendor as a trade-in;
  - (d) the amount of any tax imposed by the United States with respect to retail sales, whether imposed upon the retailer or the consumer, except for manufacturers or importers excise taxes.
  - ~~(e) a motor vehicle operated with a dealer, transporter, or manufacturer, or education license plate and used in accordance with the provisions of Section 56-3-2320 or 56-3-2330;~~
  - (f) that portion of a charge taxed under Section 12-36-910(B)(3) or 12-36-1310(B)(3) attributable to the cost set by statute for a governmental license or permit.
  - (g) fees imposed on the sale of motor oil, new tires, lead-acid batteries, and white goods pursuant to Article 1, Chapter 96 of Title 44, including the refundable deposit when a lead-acid battery core is not returned to a retailer.
  - (h) the sales price, not including sales tax, of property on sales which are actually charged off as bad debts or uncollectible accounts for state income tax purposes. A taxpayer who pays the tax on the unpaid balance of an account which has been found to be worthless and is actually charged off for state income tax purposes may take a deduction for the sales price charged off as a bad debt or uncollectible account on a return filed pursuant to this chapter, except that if an amount charged off is later paid in whole or in part to the taxpayer, the amount paid must be included in the first return filed after the collection and the tax paid. The deduction allowed by this provision must be taken within one year of the month the amount was determined to be a bad debt or uncollectible account.
  - (i) interest, fees, or charges however described, imposed on a customer for late payment of a bill for electricity or natural gas, or both, whether or not sales tax is required to be paid on the underlying electricity or natural gas bill.
  - (j) the environmental surcharge imposed pursuant to Section 44-56-430.
  - (k) the alcoholic liquor by the drink excise tax imposed by Section 12-33-245.
  - (l) tangible personal property purchased by a person engaged in the business of servicing a warranty, maintenance, or similar service contract for use in replacing a defective part under the contract if tax was paid on the sale or the renewal of the contract and the customer is not charged for labor or material when the part is replaced.

**SECTION 12-36-110. Sale at retail; retail sale.**

Sale at retail and retail sale mean all sales of tangible personal property except those defined as wholesale sales. The quantity or sales price of goods sold is immaterial in determining if a sale is at retail.

- (1) The terms include:
  - (a) sales of building materials to construction contractors, builders, or landowners for resale or use in the form of real estate;
  - (b) sales of tangible personal property to manufacturers, processors, compounders, quarry operators, or mine operators, which are used or consumed by them, and do not become an ingredient or component part of the tangible personal property manufactured, processed, or compounded for sale;
  - (c) the withdrawal, use, or consumption of tangible personal property by anyone who purchases it at wholesale, except:
    - (i) withdrawal of tangible personal property previously withdrawn and taxed by such business or person,
    - (ii) tangible personal property which becomes an ingredient or component part of tangible personal property manufactured or compounded for sale,
    - (iii) tangible personal property used directly in manufacturing, compounding, or processing tangible personal property for sale,
    - ~~(iv) materials, containers, cores, labels, sacks, or bags used incident to the sale and delivery of tangible personal property for sale;~~
    - ~~(v) a motor vehicle operated with a dealer, transporter, or manufacture, or education license plate and used in accordance with the provisions of Section 56-3-2320 or 56-3-2330;~~
  - (d) the use within this State of tangible personal property by its manufacturer as building materials in the performance of a construction contract. The manufacturer must pay the sales tax based on the fair market value at the time and place where used or consumed;
  - (e) sales to contractors for use in the performance of construction contracts;
  - (f) [Reserved];
  - (g) sales of tangible personal property, other than cigarettes and soft drinks in closed containers, to vendors who sell the property through vending

machines. The vendors are deemed to be the users or consumers of the property;

- (h) sales of prepared meals, or unprepared food products used to prepare meals, to hospitals, infirmaries, sanitariums, nursing homes, and similar institutions, educational institutions, boarding houses, and transportation companies, if furnished as part of the service rendered. These institutions and companies are deemed to be the users or consumers of the property;
- (i) sales of drugs, prosthetic devices, and other supplies to hospitals, infirmaries, sanitariums, nursing homes, and similar institutions, medical doctors, dentists, optometrists, and veterinarians, if furnished to their patients as a part of the service rendered. These institutions, companies, and professionals are deemed to be the users or consumers of the property;
- (j) sales, not otherwise exempted, when reimbursed or paid in whole or in part by Medicare or Medicaid. However, only the net amount reimbursed by Medicare and Medicaid is subject to the tax, if the vendor is prohibited by law from charging the purchaser the difference between the retail sale and the amount reimbursed.
- (k) sales of all local telecommunications services by local exchange companies (LECs) to customer owned coin-operated telephone (COCOT) providers, as those terms are defined by the South Carolina Public Service department. The COCOT providers that purchase these services in order to provide payphone services to their customers are considered to be the users and consumers of the services, and are not subject to sales tax for their subsequent sale of local telecommunications services to their COCOT customers.
- (l) sales of tangible personal property to veterinarians. The veterinarians are deemed to be the users or consumers of the property whether used in the rendering of professional services or sold outright as part of the veterinarian practice and not furnished as a part of professional services rendered.

The terms do not include sales of tangible personal property to a manufacturer or construction contractor when the tangible personal property is subsequently processed, partially or completely fabricated, or manufactured in this State by the manufacturer or contractor, for use in the performance of a construction contract if the property is transported to, assembled, installed, or erected at a job site outside the State and thereafter used solely outside the State.

**7. SECTION 12-36-130. "Sales price".**

"Sales price" means the total amount for which tangible personal property is sold, without any deduction for the cost of the property sold, the cost of the materials used, labor, installation, or service cost, interest paid, losses, or any other expenses.

(1) The term includes:

(a) any services or transportation costs that are a part of the sale, whether paid in money or otherwise;

(b) any manufacturers or importers excise tax imposed by the United States.

(2) The term does not include:

(a) a cash discount allowed and taken on the sale;

(b) an amount charged for property, which is returned by the purchaser, and the full amount is refunded in cash or by credit;

(c) the value allowed for secondhand property transferred to the vendor in partial payment; and

(d) the amount of any tax imposed by the United States with respect to retail sales, whether imposed upon the retailer or consumer, except for manufacturers or importers excise taxes.

For purposes of the sale of an "audiovisual master" as defined in Section 12-36-2120(55), sales price is the total amount for which the audiovisual master is sold, including charges for any services that go into its fabrication, manufacture, or delivery that are a part of the sale valued in money whether paid in money, or otherwise, and includes any amount for which credit is given to the purchaser by the seller without any deduction from it on account of the cost of the property sold, the cost of materials used, labor or service costs, interest charged, losses, or any other expenses whatsoever.

The term "sales price" as defined in this section, also does not include the sales price, not including tax, of property on sales which are actually charged off as bad debts or uncollectible accounts for state income tax purposes. A taxpayer who pays the tax on the unpaid balance of an account which has been found to be worthless and is actually charged off for state income tax purposes may take a deduction for the sales price charged off as a bad debt or uncollectible account on a return filed pursuant to this chapter, except that if an amount charged off is later paid in whole or in part to the taxpayer, the amount paid must be included in the first return filed after the collection and the tax paid. The deduction allowed by this paragraph must be taken within one year of the month the amount was determined to be a bad debt or uncollectible account.

**8. SECTION 12-36-140. "Storage" and "Use".**

(A) "Storage" includes any keeping or retaining in this State, for any purpose except sale in the regular course of business or subsequent use solely outside this State, of tangible personal property purchased at retail.

(B) "Use" includes the exercise of any right or power over tangible personal property incident to the ownership of that property, or by any transaction in which possession is given; but it does not include the sale of that property in the regular course of business.

(C) "Storage" and "use" do not include the keeping, retaining, or exercising of any right or power over tangible personal property:

(1) for the exclusive purpose of subsequently transporting it outside the State for first use;

(2) for the purpose of first being manufactured, processed, or compounded into other tangible personal property to be transported and used solely outside the State; or

(3) for the purpose of being distributed as ~~(i) cooperative direct mail promotional advertising materials, or (ii)~~ promotional maps, brochures, pamphlets, or discount coupons by nonprofit chambers of commerce or convention and visitor bureaus who are exempt from income taxation pursuant to Internal Revenue Code Section 501(c) by means of interstate carrier, a mailing house, or a United States Post Office to residents of this State from locations both inside and outside the State. ~~For purposes of this item, "cooperative direct mail promotional advertising materials" means discount coupons, advertising leaflets, and similar printed advertising, including any accompanying envelopes and labels which are distributed with promotional advertising materials of more than one business in a single package to potential customers, at no charge to the potential customer, of the businesses paying for the delivery of the material.~~

#### **ADD NEW CODE SECTION 12-36-160. "Computer software".**

"Computer software" means a set of coded instructions designed to cause a "computer" or automatic data processing equipment to perform a task. It includes software either delivered electronically or by tangible storage media and includes load and leave, meaning delivery to the purchaser by use of tangible storage media where the tangible storage media is not physically transferred to the purchaser. It also includes custom software.

#### **10. ADD NEW CODE SECTION 12-36-170. "Digital products".**

"Digital products" means electronically transferred goods obtained by the purchaser by means other than tangible storage media.

(a) "Digital Audio-Visual Works" which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any

(b) "Digital Audio Works" which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones; for purposes of the definition of "digital audio works", "ringtones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication, and

(c) "Digital Books" which means works that are generally recognized in the ordinary and usual sense as "books".



**1. ADD NEW CODE SECTION 12-36-180. "Data processing".**

"Data processing" means the manipulation of information furnished by a customer through all or part of a series of operations involving an interaction of procedures, processes, methods, personnel, and computers. It also means the electronic transfer of or access to that information. Examples of the processing include, without limitation, summarizing, computing, extracting, storing, retrieving, sorting, sequencing, and the use of computers.

**12. SECTION 12-36-910. Five percent tax on tangible personal property; laundry services, electricity, communication services, and manufacturer-consumed goods.**

(A) A sales tax, equal to ~~five~~ \_\_\_\_\_ percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail.

(B) The sales tax imposed by this article also applies to the:

(1) gross proceeds accruing or proceeding from the business of providing or furnishing any laundering, dry cleaning, dyeing, or pressing service, but does not apply to the gross proceeds derived from coin-operated laundromats and dry cleaning machines;

(2) gross proceeds accruing or proceeding from the sale of electricity;

(3)(a) gross proceeds accruing or proceeding from the charges for the ways or means for the transmission of the voice or messages, including the charges for use of equipment furnished by the seller or supplier of the ways or means for the transmission of the voice or messages. Gross proceeds from the sale of prepaid wireless calling arrangements subject to tax at retail pursuant to item (5) of this subsection are not subject to tax pursuant to this item. Effective for bills rendered after August 1, 2002, charges for mobile telecommunications services subject to the tax under this item must be sourced in accordance with the Mobile Telecommunications Sourcing Act as provided in Title 4 of the United States Code. The term "charges for mobile telecommunications services" is defined for purposes of this section the same as it is defined in the Mobile Telecommunications Sourcing Act. All other definitions and provisions of the Mobile Telecommunications Sourcing Act as provided in Title 4 of the United States Code are adopted. Telecommunications services are sourced in accordance with Section 12-36-1920;

(b)(i) for purposes of this item, a "bundled transaction" means a transaction consisting of distinct and identifiable properties or services, which are sold for one nonitemized price but which are treated differently for tax purposes;

(ii) for bills rendered on or after January 1, 2004, that include telecommunications services in a bundled transaction, if the nonitemized price is attributable to properties or services that are taxable and nontaxable, the portion of the price attributable to any nontaxable property or service is subject to tax unless the provider can reasonably identify that portion from its books and records kept in the regular course of business for purposes other than sales taxes.

(4) fair market value of tangible personal property manufactured within this State, and used or consumed within this State by the manufacturer.

(5) gross proceeds accruing or proceeding from the sale or recharge at retail for prepaid wireless calling arrangements.

(a) "Prepaid wireless calling arrangements" means communication services that:

(i) are used exclusively to purchase wireless telecommunications;

(ii) are purchased in advance;

(iii) allow the purchaser to originate telephone calls by using an access number, authorization code, or other means entered manually or electronically; and

(iv) are sold in units or dollars which decline with use in a known amount.

(b) All charges for prepaid wireless calling arrangements must be sourced to the:

(i) location in this State where the over-the-counter sale took place;

(ii) shipping address if the sale did not take place at the seller's location and an item is shipped; or

(iii) either the billing address or location associated with the mobile telephone number if the sale did not take place at the seller's location and no item is shipped.

(6) gross proceeds accruing or proceeding from the sale or renewal of warranty, maintenance, or similar service contracts for tangible property, whether or not such contracts are purchased in conjunction with the sale of tangible personal property.

(7) gross proceeds accruing or proceeding from the sale or renewal of warranty, maintenance, or similar service contracts for tangible personal property, whether or not the contracts are purchased in conjunction with the sale of tangible personal property.

(8) computer software.

(9) digital products.

(10) data processing.

~~(C) Notwithstanding other provisions in this article or Article 13, Chapter 36, of this title, the sales or use tax imposed by those articles does not apply to the gross proceeds accruing or proceeding from charges for or use of data processing. As used in this subsection, "data processing" means the manipulation of information furnished by a customer through all or part of a series of operations involving an interaction of procedures, processes, methods, personnel, and computers. It also~~

~~means the electronic transfer of or access to that information. Examples of the processing include, without limitation, summarizing, computing, extracting, storing, retrieving, sorting, sequencing, and the use of computers.~~

Sales Tax Rate: Repeals 5 cent sales tax rate (new lower rate to be inserted in final report based on BEA estimates).

**13. SECTION 12-36-1110.** Additional sales, use and casual excise tax imposed on certain items; exceptions.

Beginning June 1, 2007, an additional sales, use, and casual excise tax equal to one percent is imposed on amounts taxable pursuant to this chapter, except that this additional one percent tax does not apply to amounts taxed pursuant to Section 12-36-920(A), the tax on accommodations for transients, ~~nor does this additional tax apply to items subject to a maximum sales and use tax pursuant to Section 12-36-2110 nor to the sale of unprepared food which may be lawfully purchased with United States Department of Agriculture food coupons.~~

**14. SECTION 12-36-1310.** Imposition of tax; rate; applicability; credit for tax paid in another state.

(A) A use tax is imposed on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State, at the rate of ~~five~~ \_\_\_\_\_ percent of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State.

(B) The use tax imposed by this article also applies to the:

(1) gross proceeds accruing or proceeding from the business of providing or furnishing a laundering, dry cleaning, dyeing, or pressing service, but does not apply to the gross proceeds derived from coin operated laundromats and dry cleaning machines;

(2) gross proceeds accruing or proceeding from the sale of electricity;

(3)(a) gross proceeds accruing or proceeding from the charges for the ways or means for the transmission of the voice or messages, including the charges for use of equipment furnished by the seller or supplier of the ways or means for the transmission of the voice or messages. Gross proceeds from the sale of prepaid wireless calling arrangements subject to tax at retail pursuant to item (5) of this subsection are not subject to tax pursuant to this item. Effective for bills rendered after August 1, 2002, charges for mobile telecommunications services subject to the tax under this item must be sourced in accordance with the Mobile Telecommunications Sourcing Act as provided in Title 4 of the United States Code. The term "charges for mobile telecommunications services" is defined for purposes of this section the same as it is defined in the Mobile Telecommunications Sourcing Act. All definitions and provisions of the Mobile Telecommunications Sourcing Act as provided in Title 4 of the United States Code are adopted. Telecommunications services are sourced in accordance with Section 12-36-1920.

(b)(i) For purposes of this item, a "bundled transaction" means a transaction consisting of distinct and identifiable properties or services, which are sold for one nonitemized price but which are treated differently for tax purposes.

(ii) For bills rendered on or after January 1, 2004, that include telecommunications services in a bundled transaction, if the nonitemized price is attributable to properties or services that are taxable and nontaxable, the portion of the price attributable to any nontaxable property or service is subject to tax unless the provider can reasonably identify that portion from its books and records kept in the regular course of business for purposes other than sales taxes;

(4) fair market value of tangible personal property brought into this State, by the manufacturer thereof, for storage, use, or consumption in this State by the manufacturer.

(5) gross proceeds accruing or proceeding from the sale or recharge at retail for prepaid wireless calling arrangements.

(a) "Prepaid wireless calling arrangements" means communication services that:

(i) are used exclusively to purchase wireless telecommunications;

(ii) are purchased in advance;

(iii) allow the purchaser to originate telephone calls by using an access number, authorization code, or other means entered manually or electronically; and

(iv) are sold in units or dollars which decline with use in a known amount.

(b) All charges for prepaid wireless calling arrangements must be sourced to the:

(i) location in this State where the over-the-counter sale took place;

(ii) shipping address if the sale did not take place at the seller's location and an item is shipped; or

(iii) either the billing address or location associated with the mobile telephone number if the sale did not take place at the seller's location and no item is shipped.

(6) gross proceeds accruing or proceeding from the sale or renewal of warranty, maintenance, or similar service contracts for tangible personal property, whether or not such contracts are purchased in conjunction with the sale of tangible personal property.

(7) computer software

(8) digital products

(9) data processing

(C) When a taxpayer is liable for the use tax imposed by this section on tangible personal property purchased in another state, upon which a sales or use tax was due and paid in the other state, the amount of the sales or use tax due and paid in the other state is allowed as a credit against the use tax due this State, upon proof that the sales or use tax was due and paid in the other state. If the amount of the sales or use tax paid in the other state is less than the amount of use tax imposed by this article, the user shall pay the difference to the department.

**15. SECTION 12-36-1340.**

Each seller making retail sales of tangible personal property for storage, use, or other consumption in this State shall collect and remit the tax in accordance with this chapter and shall obtain from the department a retail license as provided in this chapter, if the retail seller:

- (1) maintains a place of business;
- (2) qualifies to do business;
- (3) solicits and receives purchases or orders by an agent, independent contractor, or representative ~~or salesman~~; or
- (4) distributes catalogs, or other advertising matter, and by reason of that distribution receives and accepts orders from residents within the State.

**16. SECTION 12-36-2110.** Maximum tax on sale or lease of certain items; calculation of tax on manufactured homes; maximum tax on purchase of certain property by religious organizations; maximum tax on sale or use of machinery for research and development.

Section 1:

(A) The maximum tax imposed by this chapter is ~~three~~ six hundred dollars in 2011; one thousand dollars in 2012 and one thousand two hundred dollars in 2013 for each sale made ~~after June 30, 1984, or lease executed after July 1, 2011-August 31, 1985~~ of each:

- (1) aircraft, including unassembled aircraft which is to be assembled by the purchaser, but not items to be added to the unassembled aircraft;
- (2) motor vehicle;
- (3) motorcycle;
- (4) boat;
- (5) trailer or semitrailer, pulled by a truck tractor, as defined in Section 56-3-20, and horse trailers, but not including house trailers or campers as defined in Section 56-3-710 or a fire safety education trailer;

(6) recreational vehicle, including tent campers, travel trailer, park model, park trailer, motor home, and fifth wheel; or

(7) railroad cars, monorail cars and locomotives; or

(8) vessels or barges.

~~(7) self-propelled light construction equipment with compatible attachments limited to a maximum of one hundred sixty net engine horsepower.~~

In the case of a lease, the total tax rate required by law applies on each payment until the total tax paid equals ~~three hundred dollars~~ the capped amount. Nothing in this section prohibits a taxpayer from paying the total tax due at the time of execution of the lease, or with any payment under the lease. To qualify for the tax limitation provided by this section, a lease must be in writing and specifically state the term of, and remain in force for, a period in excess of ninety continuous days. ~~(B) For the sale of a manufactured home, as defined in Section 40-29-20, the tax is calculated as follows:~~

~~(1) subtract trade-in allowance from the sales price;~~

~~(2) multiply the result from item (1) by sixty-five percent; \_\_\_\_\_~~

~~(3) if the result from item (2) is no greater than six thousand dollars, multiply by five percent for the amount of tax due;~~

~~(4) if the result from item (2) is greater than six thousand dollars, the tax due is three hundred dollars plus two percent of the amount greater than six thousand dollars.~~

~~However, a manufactured home is exempt from any tax in excess of three hundred dollars that may be due as a result of the calculation in item (4) if it meets these energy efficiency levels: storm or double pane glass windows, insulated or storm doors, a minimum thermal resistance rating of the insulation only of R-11 for walls, R-19 for floors, and R-30 for ceilings. However, variations in the energy efficiency levels for walls, floors, and ceilings are allowed and the exemption on tax due above three hundred dollars applies if the total heat loss does not exceed that calculated using the levels of R-11 for walls, R-19 for floors, and R-30 for ceilings. The edition of the American Society of Heating, Refrigerating, and Air Conditioning Engineers Guide in effect at the time is the source for heat loss calculation. Notwithstanding the provisions of this subsection, from July 1, 2009, to July 1, 2019, a manufactured home is exempt from any tax that may be due as a result of the calculation in this subsection if it has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each agency's energy saving efficiency requirements or has been designated as meeting or exceeding such requirements under each agency's ENERGY STAR program. The dealer selling the manufactured home must maintain records, on forms provided by the State Energy Office, on each manufactured home sold that meets the energy efficiency levels provided for in this subsection. These records must be maintained for three years and must be made available for inspection upon request of the Department of Consumer Affairs or the State Energy Office.~~

~~The maximum tax authorized by this subsection does not apply to a single-family modular home regulated pursuant to Chapter 43, Title 23.~~

~~(C) For the sale of each musical instrument, or each piece of office equipment, purchased by a religious organization exempt under Internal Revenue Code Section 501(c)(3), the maximum tax imposed by this chapter is three hundred dollars. The musical instrument or office equipment must~~

be located on church property and used exclusively for the organizations exempt purpose. The religious organization must furnish to the seller an affidavit on forms prescribed by the department. The affidavit must be retained by the seller.

(D) Repealed.

~~(E) Equipment provided, supplied, or installed on a firefighting vehicle is included with the vehicle for purposes of calculating the maximum tax due under this section.~~

Section 2: Subsections (A)(2) and (A)(3) are repealed in 2014.

Comment: The TRAC Committee took testimony on the amount of the sales tax cap in southeastern states and what items (boats, planes, mobile homes, trailers, light construction equipment, equipment installed after the sale on firefighting equipment) are covered by caps; the caps above are similar to the sales tax caps and highways fees in North Carolina.

# **17. SECTION 12-36-2120. Exemptions from sales tax.**

(A) The major sales and use tax exemptions are found in sections 12-36-2120. The amendment does as follows.

Exempted from the taxes imposed by this chapter are the gross proceeds of sales, or sales price of:

- (1) tangible personal property or receipts of any business which the State is prohibited from taxing by the Constitution or laws of the United States of America or by the Constitution or laws of this State;
- (2) ~~tangible personal property sold to the federal government;~~
- (3)
  - (a) textbooks, books, magazines, periodicals, newspapers, and access to on-line information systems used in a course of study in primary and secondary schools and institutions of higher learning or for students' use in the school library of these schools and institutions;
  - (b) books, magazines, periodicals, newspapers, and access to on-line information systems sold to publicly supported state, county, or regional libraries;

Items in this category may be in any form, including microfilm, microfiche, and CD ROM; ~~however, transactions subject to tax under Sections 12-36-910(B)(3) and 12-36-1310(B)(3) do not fall within this exemption;~~

- (4) livestock. "Livestock" is defined as domesticated animals customarily raised on South Carolina farms for use primarily as beasts of burden, or food for resale or breeding purposes, and certain mammals when raised for their pelts or fur. Animals such as dogs, cats, reptiles, fowls (except baby chicks and poults), and animals of a wild nature, are not considered livestock;
- (5) ~~feed used for the production and maintenance of poultry and livestock;~~

Comment: recodified in (6).

- (6) (a) insecticides, chemicals, fertilizers, soil conditioners, seeds, or seedlings, or nursery stock or poultry and livestock feed, and  
(b) fuel (including natural and liquefied petroleum gas) used solely in the production or curing for sale of farm, dairy, grove, vineyard, or garden products, for sale to irrigate crops or for sale in the cultivation of poultry or livestock feed or in cotton gins;  
(c) feed used for poultry and livestock for sale
- (7) ~~containers and labels used in:~~
  - (a) ~~preparing agricultural, dairy, grove, or garden products for sale, or~~
  - (b) ~~preparing turpentine gum, gum spirits of turpentine, and gum resin for sale.~~

~~For purposes of this exemption, containers mean boxes, crates, bags, bagging, ties, barrels, and other containers;~~

- (8) ~~newsprint paper, newspapers, and religious publications, including the Holy Bible and the South Carolina Department of Agriculture's The Market Bulletin;~~
- (9) coal, or coke or other fuel sold to manufacturers, recyclers, electric power companies, and transportation companies for:
  - (a) use or consumption in the production of by-products;
  - (b) the generation of heat or power used in manufacturing or recycling, tangible personal property for sale. For purposes of this item, "manufacturer" or "manufacturing" includes the activities of a processor;
  - (c) the generation of electric power or energy for use in manufacturing tangible personal property for sale; or
  - (d) the generation of motive power for transportation. For the purposes of this exemption, "manufacturer" or "manufacturing" includes the activities of mining and quarrying;
- (10)
  - (a) meals or foodstuffs used in furnishing meals to school children, if the sales use are within school buildings and are not for profit;
  - (b) meals or foodstuffs provided to elderly or disabled persons at home by nonprofit organizations that receive only charitable contributions in addition to sale proceeds from the meals;
  - (c) food stuffs, either prepared or packaged for the homeless or needy that are sold to nonprofit organizations, or food stuffs that are subsequently sold or



donated by a nonprofit organization to another nonprofit organization. This subitem is only applicable to food stuffs which are eligible for purchase under the USDA food stamp program;

- (d) meals or foodstuffs prepared or packaged that are sold to public or nonprofit organizations for congregate or in-home service to the homeless or needy or disabled adults over eighteen years of age or individuals over sixty years of age. This subitem only applies to meals and foodstuffs eligible for purchase under the USDA food stamp program.
- (11) ~~(a) toll charges for the transmission of voice or messages between telephone exchanges;~~
  - (b) ~~charges for telegraph messages;~~
  - (c) carrier access charges and customer access line charges established by the Federal Communications department of the South Carolina Public Service department; and
  - (d) electronic transactions involving automatic teller machines
- (12) fifty percent of the gross proceeds of the sales of water sold by public utilities, if rates and charges are of the kind determined by the Public Service Commission, or water sold by nonprofit corporations organized pursuant to Chapter 36 of Title 33;
- (13) fuel, lubricants, and supplies for use or consumption aboard ships in intercoastal trade or foreign commerce. This exemption does not exempt or exclude from the tax the sale of materials and supplies used in fulfilling a contract for the painting, repair, or reconditioning of ships and other watercraft;
- (14) ~~wrapping paper, wrapping twine, paper bags, and containers, used incident to the sale and delivery of tangible personal property;~~
- (15) (a) motor fuel, blended fuel, and alternative fuel subject to tax under Chapter 28 of Title 12; however, gasoline used in aircraft is not exempt from the sales use tax;
  - (b) If the fuel tax is subsequently refunded under Section 12-28-710, the sales or use tax is due unless otherwise exempt, and the person receiving the refund is liable for the sales or use tax;

COMMENT: The TRAC Fuel Tax Subcommittee is still considering proposals.

- (b) ~~(e)~~ fuels used in farm machinery and farm tractors used for farming purposes; and
- (c) ~~(d)~~ fuels used in commercial fishing vessels.

- (16) farm machinery and their replacement parts and attachments, used in planting, cultivating or harvesting farm crops, including bulk coolers (farm dairy tanks) used in the production and preservation of milk on dairy farms, and machines used in the production of poultry and poultry products on poultry farms, when such products are sold in the original state of production or preparation for sale. This exemption does not include automobiles or trucks;
- (17) machines used in manufacturing, processing, recycling, compounding, mining, or quarrying tangible personal property for sale. "Machines" include the parts of machines, attachments, and replacements used, or manufactured for use, on or in the operation of the machines and which (a) are necessary to the operation of the machines and are customarily so used, or (b) are necessary to comply with the order of an agency of the United States or of this State for the prevention or abatement of pollution of air, water, or noise that is caused or threatened by any machine used as provided in this section. This exemption does not include automobiles or trucks. As used in this item "recycling" means a process by which materials that otherwise would become solid waste are collected, separated, or processed and reused, or returned to use in the form of raw materials or products, including composting, for sale. ~~In applying this exemption to machines used in recycling, the following percentage of the gross proceeds of sale, or sales price of, machines used in recycling are exempt from the taxes imposed by this chapter:~~

Fiscal Year of Sale	Percentage
Fiscal year 1997-98	fifty percent
After June 30, 1998	one hundred percent

- (18) ~~fuel used exclusively to cure agricultural products;~~

COMMENT: This is recodified in (6).

- (19) electricity used by ~~cotton gins~~, manufacturers, recyclers, miners, or quarriers to manufacture, recycle, mine, or quarry tangible personal property for sale. For purposes of this item, "manufacture" or "manufacture" includes the activities of processors;

COMMENT: Cotton gins are recodified in (6)

- (20) ~~railroad cars, locomotives, and their parts, monorail cars, and the engines or motors that propel them, and their parts;~~

COMMENT: Railroad cars, etc. subject to sales tax caps contained in Section 12-36-2110.

- (21) ~~vessels and barges of more than fifty tons burden;~~

COMMENT: Subject to sales tax caps contained in Section 12-36-2110.

- (22) Materials necessary to assemble missiles to be used by the Armed Forces of the United States;
- (23) ~~farm, grove, vineyard, and garden products, if sold in the original state of production or preparation for sale, when sold by the producer or by members of the producers immediate family;~~
- (24) supplies and machinery used by laundries, cleaning, dyeing, pressing, or garment or other textile rental establishments in the direct performance of their primary function, but not sales of supplies and machinery used by coin-operated laundromats;
- (25) ~~motor vehicles (excluding trucks) or motorcycles, which are required to be licensed to be used on the highways, sold to a resident of another state, but who is located in South Carolina by reason of orders of the United States Armed Forces. This exemption is allowed only if within ten days of the sale the vendor is furnished a statement from a commissioned officer of the Armed Forces of a higher rank than the purchaser certifying that the buyer is a member of the Armed Forces on active duty and a resident of another state or if the buyer furnishes a leave and earnings statement from the appropriate department of the armed services which designates the state of residence of the buyer;~~
- (26) ~~all supplies, technical equipment, machinery, and electricity sold to radio and television stations and cable television systems, for use in producing, broadcasting, or distributing programs. For the purpose of this exemption, radio stations, television stations, and cable television systems are deemed to be manufacturers;~~
- (27) ~~all plants and animals sold to any publicly supported zoological park or garden or to any of its non-profit support corporations;~~
  - (a) ~~medicine and prosthetic devices sold by prescription, prescription medicines used to prevent respiratory syncytial virus, prescription medicines and therapeutic radiopharmaceuticals used in the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases, including prescription medicines used to relieve the efforts of any such treatment, free samples of prescription medicine distributed by its manufacturer and any use of these free samples;~~
- (28) (a) ~~medicine and prosthetic devices sold by prescription, prescription medicines used to prevent respiratory syncytial virus, prescription medicines and therapeutic radiopharmaceuticals used in the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases, including prescription medicines used to relieve the efforts of any such treatment, free samples of prescription medicine distributed by its manufacturer and any use of these free samples~~

- (b) fifty percent of the gross proceeds of the sales of medicine and prosthetic devices sold by prescription and medicine and prosthetic devices sold to physicians, hospitals, infirmaries, sanitariums, nursing homes, dentists, optometrists and veterinarians.
  - (c) fifty percent of the gross proceeds of the sales of hypodermic needles, insulin, alcohol swabs, blood sugar testing strips, monolet lancets, dextrometer supplies, blood glucose meters, and other similar diabetic supplies sold to diabetics under the authorization and direction of a physician;
  - (d) fifty percent of the gross proceeds of the sales of disposable medical supplies such as bags, tubing, needles, and syringes, which are dispensed by a licensed pharmacist in accordance with an individual prescription written for the use of a human being by a licensed health care provider, which are used for the intravenous administration of a prescription drug or medicine, and which come into direct contact with the prescription drug or medicine. This exemption applies only to supplies used in the treatment of a patient outside of a hospital, skilled nursing facility, or ambulatory surgical treatment center
  - (e) medicine donated by its manufacturer to a public institution of higher education for research or for the treatment of indigent patients; and
  - (e) dental prosthetic devices;
  - (f) prescription drugs dispensed to Medicare Part A patients residing in a nursing home are not considered sales to the nursing home and are not subject to the sales tax.
- (29) ~~tangible personal property purchased by persons under a written contract with the federal government when the contract necessitating the purchase provides that title and possession of the property is to transfer from the contractor to the federal government at the time of purchase or after the time of purchase. This exemption also applies to purchases of tangible personal property which becomes part of real or personal property owned by the federal government or, as provided in the written contract, is to transfer to the federal government. This exemption does not apply to purchases of tangible personal property used or consumed by the purchaser;~~
- (30) office supplies, or other commodities, and services resold by the Division of General Services of the State Budget and Control Board to departments and agencies of the state government, if the tax was paid on the divisions original purchase;
- (31) ~~vacation time sharing plans, vacation multiple ownership interests, and exchanges of interests in vacation time sharing plans and vacation multiple ownership interests as provided by Chapter 32 of Title 27, and any other exchange of accommodations in which the accommodations to be exchanged are the primary consideration;~~

Comment: Some states apply a flat fee for time shares for ease of calculation/administration.

- (32) ~~natural and liquefied petroleum gas and electricity used exclusively in the production of poultry, livestock, swine, and milk;~~

Comment: recodified in (6).

- (33) Fifty percent of the gross proceeds of the sales of electricity, natural gas, fuel oil, kerosene, LP gas, coal, or any other combustible heating material or substance used for residential purposes. Individual sales of kerosene or LP gas of twenty gallons or less by retailers are considered used for residential heating purposes;
- (34) fifty percent of the gross proceeds of the sale of a manufactured home, as defined in Section 40-29-20, or a modular home regulated pursuant to Chapter 43 of Title 23, both on-frame and off-frame. For purposes of this item only, "gross proceeds of sale" equals the manufacturer's net invoice price of the modular home sold, including all accessories built in to the modular home at the time of delivery to the purchaser and not including freight or deposit on returnable materials. The manufacturer shall collect the tax and remit it to the Department of Revenue;
- (35) motion picture film sold or rented to or by theaters;
- (36) tangible personal property where the seller, by contract of sale, is obligated to deliver to the buyer, or to an agent or donee of the buyer, at a point outside this State or to deliver it to a carrier or to the mails for transportation to the buyer, or to an agent or donee of the buyer, at a point outside this State;
- (37) petroleum asphalt products, commonly used in paving, purchased in this State, which are transported and consumed out of this State;
- (38) ~~hearing aids, as defined by Section 40-25-20(5);~~
- (39) ~~concession sales at a festival by an organization devoted exclusively to public or charitable purposes, if:~~
- ~~(a) all the net proceeds are used for those purposes;~~
  - ~~(b) in advance of the festival, its organizers provide the department, on a form it prescribes, information necessary to ensure compliance with this item;~~

~~For purposes of this item, a "festival" does not include a recognized state or county fair;~~

- (40) ~~containers and chassis, including all parts, components, and attachments, sold to international shipping lines which have a contractual relationship with the South Carolina State Ports Authority and which are used in the import or export of goods to and from this State;~~

- (41) ~~items sold by organizations exempt under Section 12-37-220A(3) and (4) and B(5), (6), (7), (8), (12), (16), (19), (22), and (24), if the net proceeds are used exclusively for exempt purposes and no benefit inures to any individual. An organization whose sales are exempted by this item is also exempt from the retail license tax provided in Article 5 of this chapter;~~
- (42) depreciable assets, used in the operation of a business, pursuant to the sale of the business. This exemption only applies when the entire business is sold by the owner of it, pursuant to a written contract and the purchaser continues operation of the business;
- (43) ~~all supplies, technical equipment, machinery, and electricity sold to motion picture companies for use in filming or producing motion pictures for the purposes of this item, "motion picture" means any audiovisual work with a series of related images either on film, tape, or other embodiment, where the images shown in succession impart an impression of motion together with accompanying sound, if any, which is produced, adapted, or altered for exploitation as entertainment, advertising, promotional, industrial, or educational media; and a "motion picture company" means a company generally engaged in the business of filming or producing motion pictures;~~

Comment: Duplicative of Film Commission Section

- (44) ~~electricity used to irrigate crops;~~

COMMENT: This is recodified in (6)

- (45) ~~building materials, supplies, fixtures, and equipment for the construction, repair, or improvement of or that become a part of a self-contained enclosure or structure specifically designed, constructed, and used for the commercial housing of poultry or livestock.~~
- (46) War memorials or monuments honoring units or contingents of the Armed Forces of the United States or of the National Guard, including United States military vessels, which memorials or monuments are affixed to public property;
- (47) ~~tangible personal property sold to charitable hospitals predominantly serving children exempt under Section 12-37-220, where care is provided without charge to the patient;~~

COMMENT: Recodified in (63)

- (48) ~~solid waste disposal collection bags required pursuant to the solid waste disposal plan of a county or other political subdivision if the plan requires the purchase of a specifically designated containment bag for solid waste disposal;~~
- (49) ~~postage purchased by a person engaged in the business of selling advertising services for clients consisting of mailing, or directing the mailing of, printed~~

~~advertising material through the United States mail directly to the client's customers or potential customers or by a person to mail or direct the mailing of printed advertising material through the United States mail to a potential customer;~~

- (50) (a) ~~recycling property;~~
- (b) ~~electricity, natural gas, propane, or fuels of any type, oxygen, hydrogen, nitrogen, or gasses of any type, and fluids and lubricants used by a qualified recycling facility;~~
- (c) ~~tangible personal property which becomes, or will become, an ingredient or component part of products manufactured for sale by a qualified recycling facility;~~
- (d) ~~as used in this item, "recycling property", "qualified recycling facility", and "postconsumer waste material" have the meanings provided in Section 12-6-3460.~~

COMMENT: Recyclers are treated as manufacturers in (9)

- (51) material handling systems and material handling equipment used in the operation of a distribution facility or a manufacturing facility including, but not limited to, racks used in the operation of a distribution facility or a manufacturing facility and either used or not used to support a facility structure or part of it. To qualify for this exemption, the taxpayer shall notify the department before the first month it uses the exemption and shall invest at least thirty-five million dollars at a single site in real or personal property in this State over the five-year period beginning on the date provided by the taxpayer to the department in its notices. The taxpayer shall notify the department in writing that it has met the thirty-five million dollar investment requirement or, after the expiration of the five years, that it has not met the thirty-five million dollar investment requirement. The department may assess any tax due on material handling systems and material handling equipment purchased tax-free pursuant to this item but due the State as a result of the taxpayer's failure to meet the thirty-five million dollar investment requirement. The running of the periods of limitations for assessment of taxes provided in Section 12-54-85 is suspended for the time period beginning with notice to the department before the taxpayer uses the exemption and ending with notice to the department that the taxpayer either has met or has not met the thirty-five million dollar investment requirement.
- (52) Parts and supplies used by persons engaged in the business of repairing or reconditioning aircraft owned by or leased to the federal government or commercial air carriers. This exemption does not extend to tools and other equipment not attached to or that do not become a part of the aircraft.
- (53) ~~motor vehicle extended service contracts and motor vehicle extended warranty contracts.~~

- (54) ~~Clothing and other attire required for working in a Class 100 or better as defined in Federal Standard 290E clean room environment.~~
- (55) ~~Audiovisual masters made or used by a production company in making visual and audio images for first generation reproduction. For purposes of this item:~~
- (a) ~~"Audiovisual master" means an audio or video film, tape, or disk, or another audio or video storage device from which all other copies are made.~~
  - (b) ~~"Production company" means a person or entity engaged in the business of making motion picture, television, or radio images for theatrical, commercial, advertising, or education purposes.~~
- (56) Machines used in research and development. "Machines" includes machines and parts of machines, attachments, and replacements which are used or manufactured for use on or in the operation of the machines, which are necessary to the operation of the machines, and which are customarily used in that way. "Machines used in research and development" means machines used directly and primarily in research and development, in the experimental or laboratory sense, of new products, new uses for existing products, or improvement of existing products.
- (57) (a) sales taking place during a period beginning 12:01 a.m. on the first Friday in August and ending at twelve midnight the following Sunday of school supplies exclusively for use by students in schools including:
- (i) ~~clothing;~~
  - (ii) ~~clothing accessories including, but not limited to, hats, scarves, hosiery, and handbags;~~
  - (iii) ~~footware;~~
  - (i) ~~(iv) school supplies including, but not limited to, pens, pencils, paper, binders, notebooks, books, bookbags, lunchboxes, and calculators;~~
  - (ii) ~~(v) computers, printers and printer supplies, and computer software;~~
  - (vi) ~~bath wash clothes, blankets, bed spreads, bed linens, sheet sets, comforter sets, bath towels, shower curtains, bath rugs and mats, pillows and pillow cases~~
- (b) The exemption allowed by this item does not apply to:
- (i) sales of jewelry, cosmetics, eyewear, wallets, watches;
  - (ii) sales of furniture;



- (iii) a sale of an item placed on layaway or similar deferred payment and delivery plan however described;
  - (iv) sales or rental of clothing, clothing accessories or footwear;
  - (i) (v) a sale or lease of an item for use in a trade or business.
- (c) Before July tenth at each year, the department shall publish and make available to the public and retailers a list of those ~~articles~~ school supplies qualifying for the exemption allowed by this item.
- (58) ~~cooperative direct mail promotional advertising materials and promotional maps, brochures, pamphlets, or discount coupons by nonprofit chambers of commerce or convention and visitor bureaus who are exempt from income taxation pursuant to Internal Revenue Code Section 501(c) delivered at no charge by means of interstate carrier, a mailing house, or a United States Post Office to residents of this State from locations both inside and outside the State. For purposes of this item, "cooperative direct mail promotional advertising materials" means "discount coupons, advertising leaflets, and similar printed advertising, including any accompanying envelopes and labels which are distributed with promotional advertising materials of more than one business in a single package to potential customers, at no charge to the potential customer, of the businesses paying for the delivery of the material.~~
- (59) ~~facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act;~~
- (60) a lottery ticket sold pursuant to Chapter 150 of Title 59;
- (61) copies of or access to legislation or other informational documents provided to the general public or any other person by a legislative agency when a charge for these copies is made reflecting the agency's cost of the copies. Funds received as revenue from the sale of materials or as reimbursements for the cost of providing certain supplies or services or refunds must be remitted to the State Treasurer as collected, but in no event later than twelve working days from the date of the receipt of any such funds.
- (62) fifty percent of the gross proceeds of the rental or lease of portable toilets.
- (63) prescription and over-the-counter medicines and medical supplies, including diabetic supplies, diabetic diagnostic equipment, and diabetic testing equipment, sold to a health care clinic or charitable hospital exempt under Section 12-37-220 that provides medical ~~and~~ or dental care without charge to all of its patients.
- (64) ~~Sweetgrass baskets made by artists of South Carolina using locally grown sweetgrass.~~

- (65) (a) computer equipment, as defined in subitem (c) of this item, used in connection with a technology intensive facility as defined in Section 12-6-3360(M)(14)(b), where
- (i) the taxpayer invests at least three hundred million dollars in real or personal property or both comprising or located at the facility over a five-year period;
  - (ii) the taxpayer creates at least one hundred new full-time jobs at the facility during that five-year period, and the average cash compensation of at least one hundred of the new full-time jobs is one hundred fifty percent of the per capita income of the State according to the most recently published data available at the time the facility's construction starts; and
  - (iii) at least sixty percent of the three hundred million dollars minimum investment consists of computer equipment;
- (b) computer equipment, as defined in subitem (c) of this item, used in connection with a manufacturing facility, where:
- (i) the taxpayer invests at least seven hundred fifty million dollars in real or personal property or both comprising or located at the facility over a seven-year period; and
  - (ii) the taxpayer creates at least three thousand eight hundred full-time new jobs at the facility during that seven-year period.

As used in this subitem, "taxpayer" includes a person who bears a relationship to the taxpayer as described in Section 267(b) of the Internal Revenue Code.

(c) For the purposes of this item, "computer equipment" means original or replacement servers, routers, switches, power units, network devices, hard drives, processors, memory modules, motherboards, racks, other computer hardware and components, cabling, cooling apparatus, and related or ancillary equipment, machinery, and components, the primary purpose of which is to store, retrieve, aggregate, search, organize, process, analyze, or transfer data or any combination of these, or to support related computer engineering or computer science research.

(d) These exemptions apply from the start of the investment in or construction of the technology intensive facility or the manufacturing facility. The taxpayer shall notify the Department of Revenue of its use of the exemption provided in this item on or before the first sales tax return filed with the department after the first such use. Upon receipt of the notification, the department shall issue an appropriate exemption certificate to the taxpayer to be used for qualifying purposes under this item. Within six months after the fifth anniversary of the taxpayer's first use of this exemption, the taxpayer shall notify the department in writing that it has or has not met the investment and job requirements of this item by the end of that five-year period.

Once the department certifies that the taxpayer has met the investment and job requirements, all subsequent purchases of or investments in computer equipment, including to replace originally deployed computer equipment or to implement future expansions, likewise shall qualify for the exemption described above, regardless of when the taxpayer makes the investments.

(e) The department may assess any tax due on property purchased tax free pursuant to this item but due the State if the taxpayer subsequently fails timely to meet the investment and job requirements of this item after being granted the exemption; for purposes of determining whether the taxpayer has timely satisfied the investment requirement, replacement computer equipment counts toward the investment requirement to the extent that the value of the replacement computer equipment exceeds the cost of the computer equipment so replaced, but, provided the taxpayer otherwise qualifies for the exemption, the full value of the replacement computer equipment is exempt from sales and use tax. The running of the periods of limitation within which the department may assess taxes provided pursuant to Section 12-54-85 is suspended during the time period beginning with the taxpayer's first use of this exemption and ending with the later of the fifth anniversary of first use or notice to the department that the taxpayer either has met or has not met the investment and job requirements of this item;

- (66) electricity used by a technology intensive facility as defined in Section 12-6-3360(M)(14)(b) and qualifying for the sales tax exemption provided pursuant to item (65) of this section, and the equipment and raw materials including, without limitation, fuel used by such qualifying facility to generate, transform, transmit, distribute, or manage electricity for use in such a facility. The running of the periods of limitation within which the department may assess taxes pursuant to Section 12-54-85 is suspended during the same time period it is suspended in item (65)(d) of this section.
- (67) effective July 1, 2011, construction materials used in the construction of a new or expanded single manufacturing or distribution facility, or one that serves both purposes, with a capital investment of at least one hundred million dollars in real and personal property at a single site in the State over an eighteen-month period, or effective November 1, 2009, construction materials used in the construction of a new or expanded single manufacturing facility where:
  - (i) the taxpayer invests at least seven hundred fifty million dollars in real or personal property or both comprising or located at the facility over a seven-year period; and
  - (ii) the taxpayer creates at least three thousand eight hundred full-time new jobs at the facility during that seven-year period.

To qualify for this exemption, the taxpayer shall notify the department before the first month it uses the exemption and shall make the required investment over the applicable time period beginning on the date provided by the taxpayer to the

department in its notices. The taxpayer shall notify the department in writing that it has met the investment requirement or, after the expiration of the applicable time period, that it has not met the investment requirement. The department may assess any tax due on construction materials purchased tax free pursuant to this subitem but due the State as a result of the taxpayer's failure to meet the investment requirement. The running of the periods of limitations for assessment of taxes provided in Section 12-54-85 is suspended for the time period beginning with notice to the department before the taxpayer uses the exemption and ending with notice to the department that the taxpayer either has met or has not met the investment requirement.

As used in this subitem, "taxpayer" includes a person who bears a relationship to the taxpayer as described in Section 267(b) of the Internal Revenue Code.

- (68) ~~any property sold to the public through a sheriff's sale as provided by law.~~
- (69) the sale or renewal of a warranty, maintenance, or similar service contract for tangible personal property if the sale or purchase of the tangible personal property covered by the contract is exempt or excluded from the tax imposed by this chapter.
- (70)
  - (a) ~~gold, silver or platinum bullion, or any combination of this bullion;~~
  - (b) ~~coins that are or have been legal tender in the United States or other jurisdiction; and~~
  - (c) ~~currency.~~

~~The department shall prescribe documentation that must be maintained by retailers claiming the exemption allowed by this item. This documentation must be sufficient to identify each individual sale for which the exemption is claimed.~~

- (71) ~~any device, equipment, or machinery operated by hydrogen or fuel cells, any device, equipment, or machinery used to generate, produce, or distribute hydrogen and designated specifically for hydrogen applications or for fuel cell applications, and any device, equipment, or machinery used predominantly for the manufacturing of, or research and development involving hydrogen or fuel cell technologies. For purposes of this item:~~
  - (a) ~~"fuel cells" means a device that directly created electricity using hydrogen (or hydrocarbon-rich fuel) and oxygen through an electro-chemical process; and~~
  - (b) ~~"research and development" means laboratory, scientific, or experimental testing and development of hydrogen or fuel cell technologies. Research and development does not include efficiency surveys, management studies, consumer surveys, economic surveys, advertising, or promotion, or research in connection with literary, historical, or similar projects.~~

- (72) ~~any building materials used to construct a new or renovated building or any machinery or equipment located in a research district. However, the amount of the sales tax that would be assessed without the exemption provided by this section must be invested by the taxpayer in hydrogen or fuel cell machinery or equipment located in the same research district within twenty-four months of the purchase of an exempt item.~~

~~"Research district" means land owned by the State, a county, or other public entity that is designated as a research district by the University of South Carolina, Clemson University, the Medical University of South Carolina, South Carolina State University, or the Savannah River National Laboratory.~~

- (73) an amusement park ride and any parts, machinery, and equipment used to assemble, operate, and make up an amusement park ride or performance venue facility located in a qualifying amusement park or theme park and any related or required machinery, equipment, and fixtures located in the same qualifying amusement park or theme park.

- (a) To qualify for the exemption, the taxpayer shall meet the investment and job requirements provided in subsubitem (i) of subitem (b) over a five-year period beginning on the date of the taxpayer's first use of this exemption. The taxpayer shall notify the Department of Revenue of its intent to qualify and use this exemption and upon receipt of the notification, the department shall issue an appropriate exemption certificate to the taxpayer to be used for qualifying purposes under this item. Within six months after the fifth anniversary of the taxpayer's first use of this exemption, the taxpayer shall notify the department, in writing, that it has or has not met the investment and job requirements of this item. If the taxpayer fails to meet the investment and job requirements, the taxpayer shall pay to the State the amount of the tax that would have been paid but for this exemption. The running of the periods of limitations for assessment of taxes provided in Section 12-54-85 is suspended for this time period beginning with the taxpayer's first use of this exemption and ending with notice to the department that the taxpayer has or has not met the investment and job requirements of this item.

- (b) For purposes of this item:

- (i) "Qualifying amusement park or theme park" means a park that is constructed and operated by a taxpayer who makes a capital investment of at least two hundred fifty million dollars at a single site and creates at least two hundred fifty full-time jobs and five hundred part-time or seasonal jobs.
- (ii) "Related or required machinery, equipment, and fixtures" means an ancillary apparatus used for or in conjunction with an amusement park ride or performance venue facility, or both, including, but not

limited to, any foundation, safety fencing and equipment, ticketing, monitoring device, computer equipment, lighting, music equipment, stage, queue area, housing for a ride, electrical equipment, power transformers, and signage.

- (iii) "Performance venue facility means a facility for a live performance, nonlive performance, including any animatronics and computer-generated performance, and firework, laser, or other pyrotechnic show.
  - (iv) "Taxpayer" means a single taxpayer or, collectively, a group of one or more affiliated taxpayers. An "affiliated taxpayer" means a person or entity related to the taxpayer that is subject to common operating control and that is operated as part of the same system or enterprise. The taxpayer is not required to own a majority of the voting stock of the affiliate.
- (74) Fifty percent of the gross proceeds of the sales of durable medical equipment and related supplies:
- (a) as defined under federal and state Medicaid and Medicare laws;
  - (b) which is paid directly by funds of this State or the United States under the Medicaid or Medicare programs, where state or federal law or regulation authorizing the payment prohibits the payment of the sale or use tax; ~~and~~
  - (c) ~~— sold by a provider who holds a South Carolina retail sales license and whose principal place of business is located in this State.~~
- (75) fifty percent of the proceeds of the sales of unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons. However, the exemption allowed by this item applies only to the state sales and use tax imposed pursuant to this chapter.
- (76) ~~sales of handguns as defined pursuant to Section 16-23-10(1), rifles, and shotguns during the forty-eight hours of the Second Amendment Weekend. For purposes of this item, the "Second Amendment Weekend" begins at 12:01 a.m. on the Friday after Thanksgiving and ends at twelve midnight the following Saturday.~~
- (77) ~~Energy efficient products purchased for noncommercial home or personal use with a sales price of two thousand five hundred dollars per product or less:~~
- (a) ~~For the purposes of this exemption, an "energy efficient product" is any energy efficient product for noncommercial home or personal use consisting of any dishwasher, clothes washer, air conditioner, ceiling fan, fluorescent light bulb, dehumidifier, programmable thermostat, refrigerator, door, or window, the energy efficiency of which has been designated by the United States Environmental Protection Agency and the United States Department~~

~~of Energy as meeting or exceeding each agency's energy-saving efficiency requirements or which have been designated as meeting or exceeding such requirements under each agency's ENERGY STAR program, and gas, oil, or propane water heaters with an energy factor of 0.80 or greater and electric water heaters with an energy factor of 2.0 or greater.~~

- (b) ~~This exemption shall not apply to purchases of energy efficient products purchased for trade, business, or resale.~~
- (c) ~~The exemption provided in this item applies only to sales occurring during a period commencing at 12:01 a.m. on October 1, 2009, and concluding at 12:00 midnight on October 31, 2009, (National "Energy Efficiency Month") and every year thereafter until 2019.~~
- (d) ~~Each year until 2019, the State Energy Office shall prepare an annual report on the fiscal and energy impacts of the October first through October thirty-first exemption and submit the report to the General Assembly no later than January first of the following year.~~
- (e) ~~Beginning with the February 15, 2009, forecast by the Board of Economic Advisors of annual general fund revenue growth for the upcoming fiscal year, and annually after that, if the forecast of that growth then and in any adjusted forecast made before the beginning of the fiscal year equals at least five percent of the most recent estimate by the board of general fund revenues for the current fiscal year, then the exemption allowed by this item shall be allowed for the applicable year. If the February fifteenth forecast or adjusted forecast annual general fund revenue growth for the upcoming fiscal year meets the requirement for the credit, the board promptly shall certify this result in writing to the department.~~

Comment: The Supreme Court struck down the bill which provided the exemption for energy efficient products.

# **18. SECTION 12-36-2610. Discount for timely payment of tax.**

When a sales or use tax return required by Section 12-36-2570 and a local sales and use tax law administered and collected by the department on behalf of a local jurisdiction is filed and the taxes due on it are paid in full on or before the final due date, including any date to which the time for making the return and paying the tax has been extended pursuant to the provisions of Section 12-54-70, the taxpayer is allowed a discount as follows:

- (1) on taxes shown to be due by the return of less than one hundred dollars, three percent;
- (2) on taxes shown to be due by the return of one hundred dollars or more, ~~two~~ one percent.

In no case is a discount allowed if the return, or the tax on it is received after the due date, pursuant to Section 12-36-2570, or after the expiration of any extension granted by the department. The discount permitted a taxpayer under this section may not exceed ~~three thousand~~ one thousand dollars during any one state fiscal year. However, for taxpayers filing electronically, the discount

may not exceed ~~three thousand one hundred~~ one thousand five hundred dollars. A person making sales into this State who cannot be required to register for sales and use tax under applicable law but who nevertheless voluntarily registers to collect and remit use tax on items of tangible personal property sold to customers in this State is entitled to a discount on returns filed as otherwise provided in this section not to exceed ten thousand dollars during any one state fiscal year.

Comment: The TRAC Committee will take testimony on vendor discounts throughout the United States.

**19. SECTION 12-36-2620.** Sales and use taxes composed of two components.

The taxes imposed by Sections 12-36-910, 12-36-920(B), 12-36-1310, and 12-36-1320 are composed of two taxes as follows:

- (1) a four percent tax, which must be credited as provided in Section 59-21-1010(A), and
- (2) a one percent tax, which must be credited as provided in Section 59-21-1010(B). ~~The one percent tax specified in this item does not apply to sales to an individual eighty-five years of age or older purchasing tangible personal property for his own personal use, if at the time of sale, the individual requests the one percent exclusion from tax and provides the retailer with proof of age.~~

**20. SECTION 12-36-2630.** Seven percent sales tax on accommodations for transients composed of three components.

The tax imposed by Section 12-36-920(A) is composed of three taxes as follows:

- (1) a four percent tax which must be credited as provided in Section 59-21-1010(A); and
- (2) a one percent tax, which must be credited as provided in Section 59-21-1010(B). ~~The one percent tax specified in this item (2) does not apply to sales to an individual eighty-five years of age or older purchasing tangible personal property for his own personal use, if at the time of sale, the individual requests the one percent exclusion from tax and provides the retailer with proof of age; and~~
- (3) a two percent local accommodations tax, which must be credited to the political subdivisions of the State in accordance with Chapter 4 of Title 6. The proceeds of this tax, less the department's actual increase in the cost of administration and the expenses of the Tourism Expenditure Review Committee established pursuant to Section 6-4-35, must be remitted quarterly to the municipality or the county in which it is collected. The two percent tax provided by this item may not be increased except upon approval of two-thirds of the membership of each House of the General Assembly. However, the tax may be decreased or repealed by a simple majority of the membership of each House of the General Assembly.

The tax imposed by Section 12-36-920 must be billed and paid in a single item listed as tax, without itemizing the taxes referred to in this section.



21. **SECTION 12-36-2640.** Casual excise tax composed of two components.

The tax imposed by Section 12-36-1710 is composed of two taxes as follows:

- (1) a four percent tax which must be credited to the general fund of the State; and
- (2) a one percent tax which must be credited as provided in Section 59-21-1010(B). ~~The one percent tax specified in this item does not apply to the issuance of certificates of title or other proof of ownership to an individual eighty-five years of age or older titling or registering a motor vehicle, motorcycle, boat, motor, or airplane for his own personal use, if at the time of sale, the individual requests the one percent exclusion from tax and provides the retailer with proof of age.~~

22. **SECTION 12-36-2646.** ~~Retailers to post notice of tax exclusion available to individuals 85 years of age or over; penalties.~~

~~(A) Retailers shall post a sign at each entrance or each cash register which advises individuals eighty-five years of age or older of the one percent exclusion from tax available under Sections 12-36-2620, 12-36-2630, and 12-36-2640.~~

~~(B) A retailer who fails to post the required signs is subject to a penalty of up to one hundred dollars for each month or portion of the month the sign or signs are not posted. Continued failure to post the signs after a written warning from the Department of Revenue may result in revocation of the retailer's retail license in accordance with Section 12-54-90. Failure to post the signs does not give rise to a cause of action by an individual eighty-five years of age or older who failed to request the exclusion and provide proof of age at the time of sale.~~

23. **SECTION 12-11-30.** Income tax to be instead of other taxes; exceptions.

The income tax provided for in this chapter is instead of all other taxes on banks, except the sales and use tax, the deed recording fee, and taxes on real property. The real property of a bank is taxed in the place where it is located.

24. **SECTION 12-13-50.** Tax shall be in lieu of other taxes; exceptions.

The income tax provided in this chapter shall be in lieu of any and all other taxes on such associations, except sales and use taxes, deed recording fees, and taxes on real property. The real property of any such association shall be taxed in the place where it may be located, the same as the real property of individuals.

25. **SECTION 13-17-90.** Exemption from taxation.

It is found and declared that the project authorized by this chapter is in all respects for the benefit of all the people of the State, for the improvement of their welfare and material prosperity, and is a

public purpose and a corporation owned completely by the people of the State. The authority shall pay no taxes or assessments including, but not limited to, income tax, ~~sales and use tax~~, and property tax upon any of the property acquired by it or upon any of its activities; ~~except that the authority is entitled to the above-referenced sales and use tax exemption only in (1) transactions to obtain tangible personal property for the authority's own use or consumption, (2) transactions related to authority contracts with governmental entities and nonprofit entities, and (3) transactions related to authority contracts with private, for-profit entities doing business in South Carolina, where these contracts do not place these entities in competition with other private, for-profit entities doing business in South Carolina.~~ The securities and other obligations issued by the authority, their transfer, and the income is free from taxation. After payment of necessary operating expenses and all annual debt requirements, the authority shall reinvest net earnings furthering the purposes of this chapter.

Comment: This relates to the South Carolina Research Authority.

**26. SECTION 38-29-150. Exemption of Association from fees and taxes.**

Life and Accident Health Insurance Guaranty Fund: Repeals the sales tax exemption for the Life and Accident Health Insurance Guaranty Fund.

**27. SECTION 38-31-130. Exemption of Association from fees and taxes.**

The association is exempt from payment of all fees and all taxes levied by this State or any of its political subdivisions, except taxes levied on real or personal property, and sales and use taxes.

Comment: This relates to the South Carolina Property and Casualty Insurance Guaranty Association.

**28. SECTION 44-7-2120. Exemption of districts from State and local taxes.**

All properties owned by a district, whether real, personal, or mixed, and the income from the properties, all securities issued by a district and the indentures and other instruments executed as security therefor, all leases made pursuant to the provisions of this article, and all revenues derived from these leases, and all deeds and other documents executed by or delivered to a district, are exempt from any and all taxation by the State or by any county, municipality, or other political subdivision of the State, including, but without limitation, license excise taxes imposed in respect of the privilege of engaging in any of the activities in which a district may engage. A district is not obligated to pay or allow any fees, taxes, or costs to the clerk of court, the Secretary of State, or the register of deeds in any county in respect of its incorporation, the amendment of its certificate of incorporation, or the recording of any document. ~~The gross proceeds of the sale of any property owned by the district and used in the construction and equipment of any health care facilities for a district is exempt from all other and similar excise or sales taxes.~~ It is the express intent of this section that any district authorized under this article incurs no tax liability to the State or any of its

political subdivisions except to the extent that sales and use taxes may be payable on the purchases of goods or equipment by the district.

Comment: Regional Health Services Districts

## TEMPORARY PROVISOS

House Bill 4567, Part IB, Section 89, Proviso 89.107

### 29. Sales Tax Holiday for 2009 – Handguns, Rifles, and Shotguns

~~This temporary proviso authorizes a Second Amendment Sales Tax Holiday for purchases of handguns (as defined in Code Section 16-23-10(1)), rifles and shotguns on November 27 and 28, 2009.~~

Note: On May 4, 2009, the South Carolina Supreme Court ruled in *The American Petroleum Institute and BP Products North America Inc v. South Carolina Department of Revenue, et al.* (Opinion No. 26645) that Act 338 of 2008 violated the one subject rule of the South Carolina Constitution and was unconstitutional. The Act concerned motor fuel products offered by a terminal (Code Section 12-28-340), a sales tax holiday for handguns, rifles, and shotguns (Code Section 12-36-2120(76)) and a sales tax holiday for energy efficient products (Code Section 12-36-2120(77)). As a result, the sales tax holiday for handguns, rifles, and shotguns, and the sales tax holiday for energy efficient products in Code Sections 12-36-2120(76) and (77), respectively, were eliminated.

House Bill 4657, Part IB, Section 89, Proviso 89.77

### 30. Viscosupplementation Therapies - Sales and Use Tax Suspended

~~For this State fiscal year, the sales and use taxes on viscosupplementation therapies is suspended. No refund or forgiveness of tax may be claimed as a result of this provision.~~

Viscosupplementation Therapies: Repeals the sales tax exemption for viscosupplementation therapies.

House Bill 4657, Part IB, Section 89, Proviso 89.72 (R293)

### 31. Respiratory Syncytial Virus Medicines Exemption - Effective Date

~~Act 69, Section 3.PP, of 2003 amended Code Section 12-36-2120(28)(a) to add a sales and use tax exemption for prescription medicines used to prevent respiratory syncytial virus; it was effective for sales on or after June 18, 2003. This temporary proviso changes the effective date of this~~

~~exemption to January 1, 1999 and provides that no refund of sales and use taxes may be claimed as a result of this change in the effective date.~~

House Bill 4657, Part IB, Section 89, Proviso 89.47

## **32. Private Schools - Use Tax Exemption**

~~This temporary proviso exempts purchases of tangible personal property for use in private primary and secondary schools, including kindergarten and early childhood education programs, from the use tax if the school is exempt from income taxes under Internal Revenue Code Section 501(c)(3). This exemption does not apply to purchases subject to sales tax. See SC Regulation 117-334 for information as to which tax, the sales tax or the use tax, applies when goods are shipped into South Carolina. This use tax exemption is also applicable to purchases occurring after 1995; however, no refund is due any taxpayer on purchases exempted by this provision.~~